IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5699 OF 1991

Vijaya V. Potphode .Petitioner

Vs.

Martinbai A. Bar . ... Respondent

Mr. S. M. Kamble, Advocate for the Petitioner.

CORAM : D. G. DESHPANDE, J.

DATE : OCTOBER 5, 2006.

P.C.

. Heard the advocate for the Petitioner. Nobody is present for the Respondent. Petitioner is a tenant of the tenanted premises. The decree for ejectment was passed against him, on the ground of arrears of rent for more than six months, under Section 12(3)(a) of the Bombay Rents, Hotel, and Lodging House Rates Control Act, 1947. He filed appeal against the judgment and decree of Civil Judge J.D. Vasai in Regular Civil Suit No. 1 of 1985. Appeal came to be dismissed, and therefore, this writ petition.

2. The crucial question is whether the Petitioner was in arrears of rent. It is true that burden of proof of payment of rent is on the tenant. However, in the instant case when the plaintiff / Respondent gave notice before filing the suit, alleging that Petitioner was in arrears of rent for more than six months, the Petitioner gave reply to the said notice

and contended that he has paid the rent to the landlady Respondent, but she did not pass receipts.

3. There is written statement, wherein defendant raised the same contention. When the plaintiff entered in the witness box, in the cross-examination she admitted that whenever rent was paid to her, she had issued receipts and she was maintaining counter-foils. There are about 15 tenants, who were paying rent to her. But when opportunity was given to her, she could not produce any of the counter-foil, regarding receipt of rent from any of the tenants.

4. Therefore, even though initial burden of proof of payment of rent lies on the tenant. Considering the constant stand of payment of rent, but non-issuance of rent receipt by landlady and her inability to produce the counter-foil receipts not only in respect of present Petitioner, but in respect of other tenants also, was in fact sufficient for the Court to reject the testimony of the plaintiff landlady that the Petitioner was in arrears of rent. Both the Courts below have not considered this material aspect of the matter. Their judgments are perverse. They are liable to be set aside. Hence the order.

ORDER

1. Petition is allowed.

2. The judgment of the appellate Court and that of the lower Court, is set aside and quashed. The suit of the plaintiff is dismissed. Rule is made absolute in above terms. No orders as to costs.

[D. G. DESHPANDE, J.]